The principle is also stated in *Archbold's* Criminal Pleading, Evidence & Practice, 34th ed., p. 147 in these words:

"The principle on which the right to plead *autrefois acquit* depends is that a man may not be put twice in jeopardy for the same offence. See 2 Hawk. c. 35. And it does not rest on any doctrine of estoppel."

The only cases in which a previous acquittal can effectually be pleaded in bar to a subsequent indictment are:—

(i) where the acquittal was for the exact offence charged in the subsequent indictment; or

(ii) where the subsequent indictment is based on the same acts or omissions in respect of which the previous acquittal was made and some statute directs that the prisoner shall not be tried or punished twice in respect of the same acts or omissions."

It is clear in this case that the present offence of riding a motor-cycle without a driving licence is not the same offence with which the appellant was charged in 1955, it is a distinct and separate offence. For these reasons the contention as to the plea of *autrefois acquit* fails.

At the trial the record card kept by the police relating to the appellant was produced by the clerk in charge of the Licensing Records. On this record card were endorsed that the appellant held a driving licence for Class III and Class IV vehicles. There is no endorsement regarding Class II vehicles. This record card, however, bears endorsement from 1947 only. According to the clerk, there are no records from 1942 to 1945 and when questioned by the Court he said that "what I say is based on all available records."

The appellant in his defence said that he first obtained a driving licence in 1937 and it was endorsed for "motor-cars and lorries". In 1945 he took a test for motor-cycle and he passed that test and his licence was endorsed "and motor-cycles". In 1947 he lost the licence and he was issued with Ex. D3, a duplicate licence. In cross-examination the appellant admitted that when he received the duplicate licence he knew that he was licensed to drive Class III and Class IV vehicles only and that there was no endorsement to show that he was permitted to drive a motor-cycle.

Mr. Bezboruah submits that if the plea of *autrefois acquit* is not available then in the circumstances of this case the Magistrate should have taken into consideration that in 1955 the appellant was charged with the offence of riding a motor-cycle without a driving licence and was acquitted and he should have acquitted the appellant in this case. I am unable to agree with this submission. The Magistrate in the 1955 case did not give any reason for acquitting the appellant and it is a matter of speculation as to why he was acquitted.

It is further submitted by learned counsel that, as the record card relating to the appellant from 1937 to 1947 was not produced, the Magistrate should have accepted the evidence of the appellant that he had passed the test for motor-cycles and that an endorsement to that effect was endorsed on his original licence and that the Magistrate should have held that the defence had raised a reasonable doubt as to the truth of the prosecution case.

The Magistrate in his grounds of decision said:

"After careful deliberation the Court was of the view that the defence had failed to create any reasonable doubt as to the truth of the prosecution story and that it had also failed to create any reasonable doubt as to the guilt of the accused. Accordingly the Court found the accused guilty and convicted him."

The Magistrate appears to me to have rightly dealt with the case. The evidence for the prosecution seems to me to be very strong and it does not appear to me that the Magistrate ought to have had a reasonable doubt. In my view the Magistrate's decision was not against the weight of evidence.

Although the appellant had also appealed against sentence on the ground that it is excessive, his counsel, however, did not address the Court on it. I cannot say that the sentence is too severe.

For these reasons the appeal is dismissed.

Appeal dismissed.

LAI YONG KOON v. PUBLIC PROSECUTOR

[A. Cr. J. (Ismail Khan J.) July 2, 1962]

[Seremban — Criminal Appeal No. 17 of 1961]

Gaming — Chee Fah — Appellant found with slips of paper with Chinese characters — Description of expert that they were records of Chee Fah lottery — Whether evidence of modus operandi necessary — Expert to give reasons for holding that certain exhibits were Chee Fah Stakes — Common Gaming Houses Ordinance, 1953, s.4(1)(c).

The appellant was charged under section 4(1)(c) of the Common Gaming Houses Ordinance and convicted and sentenced to pay a fine of $250. On appeal it was contended that (1) no evidence was adduced as to the *modus operandi* of the lottery, and (2) the expert evidence was only a bare expression of opinion not supported by any reasons.

Held: (1) as Chee Fah is a character lottery, on the authority of *Choo See Kean & Ors.* v. *Public Prosecutor* (1) no evidence of *modus operandi* by an expert is necessary;

(2) the fact that the expert is not obliged to give any evidence as to the *modus operandi* of the lottery does not relieve him of the necessity of giving detailed evidence of his reasons for holding that certain exhibits were Chee Fah stakes.

Cases referred to:—

(1) *Choo See Kean & Ors.* v. *Public Prosecutor* [1959] M.L.J. 213.

(2) *Sim Ah Song & Anor.* v. *R.* [1951] M.L.J. 150.

CRIMINAL APPEAL.

Khoo Eng Chin for the appellant.

Mohd. Salleh bin Abas (Deputy Public Prosecutor) for the respondent.

Ismail Khan J.: The appellant was charged before the learned Magistrate at Port Dickson with an offence contrary to section 4(1)(c) of the Common Gaming Houses Ordinance No. 26 of 1953. He was convicted and sentenced to pay a fine of $250. His appeal is against both conviction and sentence.

The appellant was arrested whilst cycling from Seremban towards Port Dickson and was found with three slips of paper P3, P4 and P5 with Chinese characters on them. According to P.W.5, who described himself as an expert in Chee Fah lottery, a person found in possession of these slips was a collector and that P3, P4 and P5 were records of Chee Fah lottery stakes.

It was urged in this appeal, firstly, that no evidence was adduced as to the *modus operandi* of the lottery and, secondly, that the expert evidence was only a bare expression of opinion not supported by any reasons. I can dispose of the first ground by saying that as Chee Fah is a character lottery, on the authority of the case of *Choo See Kean & Ors.* v. *Public Prosecutor* [1], no evidence of *modus operandi* by an expert is necessary. With regard to the second ground of appeal, each of P3, P4 and P5 contains parallel columns of figures and without any explanation it is difficult to see what were the figures chosen and what were the stakes. There is no explanation as to how the total of the amounts staked in respect of each slip was calculated. Apart from stating that P3, P4 and P5 are records of stakes, the rest of P.W.5's evidence is as follows:—

On P3 nine numbers	—	total stakes $ 2.60
On P4 twelve numbers	—	total stakes $ 7.50
On P5 thirteen numbers	—	total stakes $10.20.

I cannot, therefore, share the satisfaction of the learned Magistrate that the evidence of P.W.5 constituted an adequate explanation of his opinion that P3, P4 and P5 are records of stakes.

I also do not see that Mr. Dobree's Gambling Games in Malaya is of much assistance in establishing that P3, P4 and P5 are gambling stakes.

The fact that the expert is not obliged to give any evidence as to the *modus operandi* of the lottery in this case does not relieve him, however, of the necessity of giving detailed evidence of his reasons for holding that P3, P4 and P5 are Chee Fah stakes. On the subject of the duty of an expert, the law which has been applied in a number of subsequent decisions is clearly stated in the case of *Sim Ah Song & Anor.* v. *Rex* [2], where Brown Ag. C.J. said at p. 151:—

> "The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine the question which it is its duty to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court."

In this case the learned Magistrate merely echoed the opinion of P.W.5 and did not appear to have appreciated that it was his duty to study the exhibits himself with the assistance of a sufficiently detailed explanation from the expert and also with his knowledge gained in previous cases, if any, before he could satisfy himself that the exhibits related to betting and staking in the Chee Fah lottery.

In this case the prosecution was obviously relying on the presumption of section 11 of the Common Gaming Houses Ordinance. As there is no evidence that the exhibits in this case were records of stakes the presumption does not arise.

The appeal is allowed, the conviction quashed, the fine, if paid, to be refunded and the exhibits to be returned to the appellant.

Appeal allowed.

Solicitors: *George & Khoo.*

MOHAMED SAID v. FATIMAH

[A.C.J. (Adams J.) July 16, 1962]

[J.B. — Civil Appeal No. 1 of 1962]

Land Laws — T.O.L. holder — Exclusive possession subject to licence — Period of validity of licence — Land Enactment (Johore) No. 1 and Land Rules, 1929, r.11(1).

Trespass to land occupied under T.O.L. — Action brought after licence has expired — Subsequent renewal of licence.

A Temporary Occupation Licence gives the holder thereof exclusive possession of the land the subject matter of the licence during the period for which the licence is expressed to be valid, i.e. from the date of issue to December 31 of the year of issue. If the licence is renewed, the period for which the renewed licence gives exclusive possession to the licensee must, since a monetary payment is a condition precedent to the grant of any licence or renewal thereof, commence at the date when the payment is made.

In this case the appellant, a Temporary Occupation Licence holder, brought an action for trespass on May 6, 1961, against the respondent. His licence had expired on December 31, 1960 and he did not subsequently make the required renewal payment until July 5, 1961.

Held: at the time he instituted the action the appellant had no right to the possession of the land, and could not therefore have instituted an action for trespass against the respondent.

Cases referred to:—

(1) *Hill* v. *Tupper* 159 E.R. Ex. 51.

(2) *Julaika Bivi* v. *Mydin* [1961] M.L.J. 310.

(3) *Thompson* v. *Ward* [1953] 2 Q.B. at p. 159.

(4) *Eshelby* v. *Federated European Bank Ltd.* [1932] 1 K.B. 254.

CIVIL APPEAL.

Abdullah bin Dato Abdul Rahman for the appellant.

L. M. Ong for the respondent.